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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

22 Cr. 240 (AKH)

6 SUNG KOOK (BILL) HWANG AND
7 PATRICK HALLIGAN,

8 Defendants.

9 Conference

10 11
12 Before:
13 HON. ALVIN K. HELLERSTEIN,
14 District Judge
15 APPEARANCES
16 DAMIAN WILLIAMS
17 United States Attorney for the
18 Southern District of New York
19 ANDREW M. THOMAS
20 MATTHEW D. PODOLSKY
21 ALEXANDRA ROTHSCHILD
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RUPITA CHAKRABORTY

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1 THE COURT: We have Alexandra Rothman and Andrew
2 Thomas?

3 MR. THOMAS: Yes, your Honor.

4 THE COURT: And Samuel Rothschild?

5 MR. ROTHSCHILD: Yes, your Honor.

6 THE COURT: Matthew Podolsky?

7 MR. PODOLSKY: Yes, your Honor.

8 THE COURT: Assistants.

9 And we have Barry Berke?

10 MR. BERKE: Yes. Good afternoon, your Honor.

11 THE COURT: Jordan Estes?

12 MR. ESTES: Yes, your Honor.

13 THE COURT: And Shaked Sivan somewhere?

14 MR. SIVAN: Yes, your Honor.

15 We have Timothy Haggarty?

16 MR. HAGGARTY: Yes, your Honor.

17 THE COURT: Rupita Chakraborty?

18 MS. CHAKRABORTY: Yes, your Honor.

19 THE COURT: Mary Mulligan?

20 MS. MULLIGAN: Good afternoon, your Honor. Nice to
21 see you.

22 THE COURT: Okay. Who is going to say a nice thing
23 about the government? Not you, Mr. Berke.

24 MR. THOMAS: We're happy to say what happened, Judge.

25 THE COURT: Yes. I'm anxious to hear what happened.

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1 MR. THOMAS: What happened was a mistake. It was an
2 error. And it's an error that --

3 THE COURT: Who made it?

4 MR. THOMAS: I'm sorry, your Honor?

5 THE COURT: Who made it?

6 MR. THOMAS: The members of the prosecution team,
7 which would include me and Mr. Podolsky at the time that
8 discovery was assembled, your Honor.

9 What happened is in the investigation of this case we
10 collected something on the order of 3 million different
11 records, including all manner of trade data. We undertook our
12 best efforts to log what came in, including by subpoena, what
13 came in by search warrant, and then ultimately what went out to
14 the defendants. And as we have learned in more detail over the
15 last week, looking into old emails and the like, discovered
16 that very early on – the earliest version I could see is
17 January 2022 – we had a log that only partially reflected the
18 materials that had been obtained from Bloomberg. So it
19 correctly captured that a number of communications records had
20 been received, but it incorrectly omitted that in addition to
21 those communications records, there were two trade files,
22 Judge. Those are the files.

23 THE COURT: We've been talking about trade files for a
24 long time.

25 MR. THOMAS: Yes, your Honor, that's true.

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1 THE COURT: And kind of basic to this kind of case
2 that you look at trades, buys, sells, so on.

3 MR. THOMAS: We agree, your Honor.

4 We very much regret not catching this error until now,
5 and we could have caught it sooner.

6 THE COURT: So Mr. Berke, what's plan B if I don't
7 give you the motion to preclude, which I'm not going to do?

8 MR. BERKE: Your Honor, could I --

9 THE COURT: What can I do to make life bearable for
10 you?

11 MR. BERKE: Your Honor, again, we've spent a lot of
12 time trying to understand that data.

13 THE COURT: I know. I know.

14 MR. BERKE: Your Honor --

15 THE COURT: I know what it is to be up against a trial
16 and not to have the basic information and to have it all sprung
17 on you at the last minute. I'm very much aware. I have a
18 great deal of empathy for what you do, but I won't preclude the
19 government. So what can I do to make life better for you?

20 MR. BERKE: Our experts tell us, given the complexity
21 of the data and what the prosecution seeks to do with it, they
22 would need approximately six months, best case, to work with
23 the data. And what happened here, your Honor, just so you
24 understand, is this data is actually detailed execution data.
25 And what the prosecution's experts apparently have done over

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1 the last two years is they have tried to match these Archego
2 execution data, millions of data points involved in all of the
3 trades and try to match what was going on in the market. They
4 have ten separate analyses, at least, things called vector
5 autoregression, things that I don't even pretend to understand.
6 But our experts tell us --

7 THE COURT: But you will for trial.

8 MR. BERKE: I will at the trial. Sounds like
9 something you'd see at a NASA launch.

10 They said it's extraordinarily complex, even if you
11 can do it. But to rebut what the prosecution is seeking to do
12 and to use it affirmatively to respond to those allegations,
13 they would have to redo the analysis they've done over a year.
14 And even then, they would then have to do new analysis --

15 THE COURT: Mr. Thomas, do you have any spreadsheets
16 to analyze all this data?

17 MR. THOMAS: It depends, your Honor. We --

18 THE COURT: Work product.

19 MR. THOMAS: We have turned over extensive work
20 product at this point that relates to the data.

21 THE COURT: Do you have one extensive spreadsheet that
22 takes in all the things you're going to use at trial?

23 MR. THOMAS: I would have to inquire, but I don't
24 believe such a comprehensive spreadsheet exists. As the Court
25 knows, we obtain data from multiple different places.

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1 THE COURT: Yes, I know, in prepping for trial,
2 because I've been there. In order to use and comprehend the
3 data and not be swallowed by it, you have to organize it in
4 some fashion, and we do that by a spreadsheet or a series of
5 spreadsheets, ultimately get reduced to some document or series
6 of documents that we display to the jury. An expert takes a
7 pointer or an electronic pointer, and he says this is this and
8 that is that and explain to the jury in a very convincing
9 fashion. Maybe you can give some of that to Mr. Berke.

10 MR. THOMAS: Your Honor, we're open to assisting
11 Mr. Berke and his team in advancing their work. I don't want
12 to speak out of turn. I'm not myself a data scientist, but
13 we're happy to and have already identified for him the fields
14 from this particular file that our experts have relied on, and
15 we've identified how these fields --

16 THE COURT: You haven't even done that with your
17 expert's reports.

18 MR. THOMAS: Your Honor, it was in working to comply
19 with the Court's order that we identified this error. But
20 we're happy to look or assemble a spreadsheet that collects
21 just the relevant part, from the government's perspective, and
22 produces that to Mr. Berke.

23 MR. BERKE: Your Honor, if I may say one --

24 THE COURT: Give me a moment.

25 MR. BERKE: Of course.

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1 THE COURT: We're supposed to start the trial
2 February 20. You want me to start that day, Mr. Berke?

3 MR. BERKE: No, your Honor.

4 THE COURT: Are you speaking to Ms. Mulligan also?

5 MS. MULLIGAN: Your Honor, I speak --

6 THE COURT: She may have a good idea. I know that she
7 does.

8 MS. MULLIGAN: Thank you, your Honor.

9 Obviously, I speak for myself and my client. But
10 given the prejudicial volume of this evidence, we won't be in a
11 position to start on February 20, so I join Mr. Berke in his
12 application.

13 THE COURT: What would you like me to do?

14 MS. MULLIGAN: Yes, your Honor.

15 I think, as Mr. Berke has indicated, the experts
16 require at least six months to analyze this data.

17 THE COURT: You don't need six months.

18 MS. MULLIGAN: Your Honor, it's extraordinarily
19 complicated.

20 THE COURT: I know. But --

21 MS. MULLIGAN: And the government's experts have had
22 this advance --

23 THE COURT: I know.

24 MS. MULLIGAN: And it's embedded, your Honor.

25 THE COURT: I've worked with experts. You don't need

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1 six months. You need as much time as the client says you'll
2 have.

3 MS. MULLIGAN: Your Honor, with all respect – and I
4 appreciate your Honor's experience – the experts have given us
5 an estimate, and these are very hardworking individuals, as are
6 we.

7 THE COURT: I'm not going to give you six months.

8 MR. BERKE: Your Honor, if I may – and I understand
9 your Honor's concerns – we spent a lot of time with our
10 experts. What is unusual in this case is our experts have
11 never seen this done in this way where the prosecution has
12 tried to do with their experts --

13 THE COURT: Mr. Berke, I have it. You got the relief
14 last time with the experts. I'm giving you relief now, but be
15 reasonable with me. How about a month?

16 MR. BERKE: Your Honor --

17 THE COURT: Two months.

18 MR. BERKE: If I could just explain the challenge is
19 the prosecution has said they're relying on every trade during
20 this period and they're matching all of the subtrades, which
21 sometimes involve a hundred to thousands of lines of data.

22 THE COURT: What do you want me to do? Maybe I'll do
23 it.

24 MR. BERKE: Judge, that's why we said six months.

25 And if I can add, your Honor, in response to your

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1 Honor's questions. This isn't great for us. Mr. Hwang has
2 already spent so much resources and time on experts that have
3 to be repeated. And it really is extraordinarily expensive,
4 time consuming, and the like, and he's ready to go to trial.
5 Beyond that, your Honor, just if I can, what we said in our
6 papers is we can do it in six months if the prosecution
7 actually disclosed what they did --

8 THE COURT: I have an idea. I meet with you on the
9 24th, and in the meantime, you and your experts and the
10 government and its experts meet and see if you can get some
11 kind of a definition of what really is at stake. And then come
12 back on the 24th and make a reasonable recommendation for
13 trial. I'm anxious to try this case. I want to get it done.
14 The longer we put it off, the more fighting we'll have.

15 And if you were called in on the last minute and you
16 had your expert called in the last minute, you would find a way
17 to do it, and I want that to be done. I don't want to put it
18 off more than a month, but I want to make sure you get adequate
19 notice to try this case.

20 Let's go off the record.

21 (Discussion off the record)

22 THE COURT: Mr. Thomas asked me what the normal trial
23 day is, and I said more words than I can say now, but it tends
24 to be Monday through Thursday, 10:00 a.m. to 5:00 p.m., an hour
25 and a quarter lunch break, short midmorning break, sometimes a

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1 short midafternoon break. No sidebars, quick objections,
2 limited arguments. That's the ideal.

3 MR. BERKE: Your Honor, if I can, couple of different
4 things. And we said this in our papers and sometimes we're
5 talking about experts and we're talking about how complex it
6 is. This is truly something that is extraordinarily complex,
7 even with a huge team to try to do. And to your question to
8 the prosecution, one of the things we said, just taking it one
9 step at a time, one step is our experts can't even understand
10 how they matched.

11 And so the meeting with our consulting experts – and
12 our consulting experts, when they answer and explain the
13 analysis they did, what they're claiming they did, that's
14 obviously critical. And we have a million questions because
15 our experts said they can't even figure out what they did or
16 what they're referring to. And also other analysis they may
17 have done and didn't produce to us, we would need everything to
18 even begin to think about how to approach this.

19 THE COURT: If this was a civil case, I would preside
20 over a sort of tutorial, which either the lawyers or the
21 experts or both tell me what the case is all about in some
22 detail. No one does this in a criminal case, but we can do it.

23 MR. BERKE: Your Honor, if your Honor will offer a
24 deposition of their consulting experts about that they did,
25 interrogatories, whatever it is, it's just not clear to us.

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1 And our experts are guessing what they tried to do. And they
2 have at least a 21-month head start on this.

3 THE COURT: But they have the burden of prosecution
4 and you don't, and you're very good at reacting to what they
5 do. That's the way it is with cases like this. The government
6 has a long lead time, much longer than the defendant.

7 MR. BERKE: Judge, if I could just explain why we're
8 surprised. The indictment alleges total domination. We're
9 preparing for that case. It alleges trading techniques. We're
10 preparing for that case. It does not allege intramarket
11 trading changes to affect the market, nor did we prepare for
12 that case because we didn't think it could be done.

13 That's why the defense repeatedly for the last year
14 and a half have asked for more trading data. Not only that,
15 we've said at least three times why are you giving us market
16 data? We don't understand it. Because it's meaningless
17 without the execution data. We've said it again and again and
18 again. Our experts have put in thousands of hours with the
19 wrong data --

20 THE COURT: Let me understand what you just said.
21 What did you get and what did you want?

22 MR. BERKE: So what we didn't get until January 5 is
23 execution data, how they executed each of these trades. We
24 didn't think it was available.

25 THE COURT: What did you get?

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1 MR. BERKE: Instead, we got information about the
2 initial trade order and we got information about the trade that
3 was put on so we could look at the total trades that were put
4 on through the swaps, both the requests and what was done --

5 THE COURT: You didn't get the actual execution
6 tickets?

7 MR. BERKE: The actual execution information we did
8 not have. The prosecution now is basing virtually their entire
9 case, as far as we can tell through their experts, on this
10 intraday trading that we not only didn't do, we haven't even
11 been preparing for --

12 THE COURT: Are you telling me that the confirmations
13 that came back on the trade differs from the executions?

14 MR. BERKE: Judge, what has changed is the prosecution
15 is now claiming that after an initial order was put in, there
16 were different changes made throughout, and it can be
17 literally - we give some examples --

18 THE COURT: Say if you're buying a block of X, Y, Z
19 stock, 10,000 shares, and they're executed at different times,
20 the confirmations will mirror the executions, won't they?

21 MR. BERKE: No, Judge, that's not what happened.

22 So we have the initial 10,000 order -- if I can, your
23 Honor, I'm going to let Ms. Estes give you the exact detailed
24 recitation of it because it really is quite striking for our
25 experts.

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1 MR. ESTES: Sure, your Honor.

2 So your Honor, what we had in the initial trade data
3 is the swap that Archegos put on. And it would have the
4 initial time of the swap that Archegos put on, say, 9:37 a.m.
5 And then it would have the final order, the number of shares
6 that were used, and the final limit price and the final
7 strategy that was used, if there was an algorithm that was used
8 to execute the trade. But each trade --

9 THE COURT: I need to understand this.

10 So in my simple mind, I thought you have a contract
11 one way and another contract another way and then execution
12 each time of that contract. Now, the execution may not be one,
13 may be a number, but the trades are confirmed. And the
14 confirmation — what I've been used to, is the records that I've
15 been using when I used to be in practice on paper, it's
16 different now — is the same as the execution, no difference
17 between the confirmation of the trade and the trade itself.

18 MR. ESTES: Your Honor, what we have is strikingly
19 different from the execution data. The initial time may be
20 9:37 a.m. It could have been executed over the course of three
21 or four hours throughout the day. We don't know when any of
22 those times are because they're being put on, and that's data
23 the government had --

24 THE COURT: So in other words, the information you
25 have is a summary of numerous executions.

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1 MR. ESTES: Yes.

2 THE COURT: Like an average?

3 MR. ESTES: It's not an average. It's the initial
4 time and the final order amount, but we don't have any way that
5 it's carried out throughout the day.

6 THE COURT: Why is that important?

7 MR. ESTES: That's important because their experts
8 have done this matching analysis to try to show price impact
9 incrementally throughout the day. And they're trying to focus
10 on very micro price impact from these trades. And what we
11 cannot do, we have been completely unable to match the
12 executions and the market data they're going to use to show
13 this price impact because we don't have any of these millions
14 of executions that they have had for 17 months, maybe even
15 longer. And the reason it's so complicated is because to
16 even --

17 THE COURT: So if the government were to give you the
18 data relating to the specific trades that they want to prove,
19 you would have all the information you need?

20 MR. ESTES: So here's the problem, Judge, not exactly.
21 So the problem is their experts have matched millions of
22 executions with millions of market price data. We certainly
23 don't have or I haven't seen any sort of work product showing
24 the millions of matching, and so our experts are telling us --

25 THE COURT: So a consulting expert will do that, but

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1 it boils down to a more specific number and --

2 MR. ESTES: I think they're alleging millions --

3 THE COURT: You don't have to retrace everything that
4 the prosecution's expert has done to come up with the specific
5 numbers. You need the specific end results.

6 MR. ESTES: Your Honor, first of all --

7 THE COURT: Can we get Mr. Thomas's thoughts on what
8 you just said so far because I'm having trouble absorbing the
9 information.

10 MR. THOMAS: Yes, your Honor.

11 It's certainly true at trial our experts will testify
12 to summary information. We have at the Court's encouragement
13 already turned over preliminary summary results. We're happy
14 to identify the data set that the Court just referenced that
15 underlies the model that the expert used to come to the summary
16 results. But the nature of this analysis is not quite so, I
17 think, far flung and difficult as the defense is suggesting.

18 Carmen Taveras, who we expect to call from the SEC,
19 she was able to do this work in the space of three or four
20 weeks. She first received the data about a month before expert
21 notices. So the notion that it needs six months, I think is
22 proven true, at least by the good folks at the SEC. We
23 absolutely take the Court's point that disclosure here will
24 ensure a fair and smooth trial for everyone. We want that.
25 We're happy to work to do even more disclosure.

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1 But at this point, the defense has the raw data. They
2 have detailed information from us about which aspects of that
3 data fed into the analysis, and we're going to comply with the
4 Court's prior instructions to produce a detailed notice that
5 will spell out exactly how the experts got from A to Z. And
6 then at trial we'll have summary charts, as the Court
7 anticipated.

8 THE COURT: Recommend a path for me to order.

9 MR. THOMAS: Your Honor, I think in light of the
10 record here, we have no opposition to granting a month
11 adjournment to the defense so that there's --

12 THE COURT: I'm worried as to what you're going to do
13 within that month. What do you do to make Mr. Berke's and
14 Ms. Mulligan's life easier? I understand what you say.

15 MR. THOMAS: Let me propose --

16 THE COURT: I understand. But they're now confronted
17 with a huge mess, and it's very hard to make sense of that.

18 MR. THOMAS: Here's what --

19 THE COURT: So it needs you to give them more to show
20 how it's reduced to comprehensible information.

21 MR. THOMAS: What we propose to do is to file by the
22 26th of this month the detailed disclosure that the Court
23 provided. And that, I think, will be a roadmap for the
24 defendants to unpack the data to anticipate precisely what the
25 government will do and let the Court then give the defense

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1 time, even as much as a month, to file corresponding defense
2 notices based on that data.

3 THE COURT: What do you mean by notices?

4 MR. THOMAS: The Court directed both parties to
5 supplement their notices. The defense experts right now
6 purport to rely on the discovery without distinguishing what it
7 is. So we would propose that the 26th be the government's
8 deadline for a supplemental disclosure, and that sometime in
9 the next month the defense provide its supplemental disclosure.
10 We're confident that on that record there will be no prejudice
11 and the defense can make full use of the data.

12 MR. BERKE: Your Honor, if I may briefly respond, I
13 just want to say one thing to be clear. What makes this so
14 hard to respond to is we're responding to essentially a science
15 experiment, so it's not simply an argument. They're going to
16 say they did a science experiment and the result is
17 manipulation.

18 THE COURT: Tell me what that means.

19 MR. BERKE: It means it's not enough to have the data.
20 It's not enough to know how they're matching it. They did ten
21 separate science experiments. So at minimum, to begin --

22 THE COURT: What's a science experiment?

23 MR. BERKE: Your Honor, they call it a vector
24 autoregression analysis, a probative order change analysis, a
25 midpoint price change analysis, a shortfall analysis, a

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1 realized spread analysis, the algorithm and exchange analysis,
2 and analysis on size and aggressiveness of trades. And what
3 they're going to say is, based on the experiments they did,
4 they're going to come with conclusions. What our experts are
5 saying, seeing their conclusions doesn't help them at all to
6 understand what they claim to be the experiments they did. So
7 just to get started, your Honor --

8 THE COURT: And the jury's going to understand this
9 stuff?

10 MR. BERKE: Your Honor, I think they're going to
11 understand the conclusions, and the problem is we need to be
12 able to challenge, assuming there's a basis, which we think
13 there will be, challenge actually the experiments they did to
14 produce these results. And to do that, we need a lot more
15 information from their experts. We would ask to actually have
16 access to their experts so we can find out exactly what
17 experiments they did and support what they claim to be this
18 result.

19 And then our own experts are going to have to do their
20 own experiments, which we understand is extraordinarily time
21 consuming because it's not only using the data, it's using the
22 entire stock market on the days in question. And the
23 prosecution, far from taking your Honor's direction to identify
24 trades, have told us on January 5 they're relying on every
25 trade during this time period. Every trade they claim is

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1 manipulative.

2 So unless that is limited, our experts now have to do
3 this experiment for every trade to try to match it up with
4 everything going on in the stock market for those stocks. And
5 that is why it is so extraordinarily complicated. So if we are
6 going to try to go forward with -- which again, your Honor, you
7 understood our request, the prosecution has to give us access
8 to their experts and full disclosure of every bit of
9 experiments they did so our experts can understand it before
10 they can do their own.

11 THE COURT: I have no way of knowing all these
12 analyses you're mentioning. I never heard of these before.
13 I've heard of vectors, but not the others.

14 What I understand is that the characteristic of a
15 manipulated price is a price that differs from the natural
16 price on a market. And so what one does is take a particular
17 stock, match it to the category of stocks that tend to rise and
18 fall together, and show the manipulation by way of an
19 artificiality that crept into the pricing of one of those
20 stocks. That's how I understand what goes on.

21 It's not an entire market, it's a sector. And you're
22 entitled to know the sector. You're entitled to know the
23 model. You're entitled to know whatever methodology they use
24 to construct their model of comparison. It's going to be a
25 comparison, the manipulated price, alleged manipulated price

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1 against some kind of conflict of what the market would be.

2 That's difficult. I understand that. But it's comprehensible
3 without all these fancy names.

4 MR. BERKE: Judge, what you just described, that's the
5 case we thought we were going to try. We had that data. They
6 made those allegations. We were ready to try that case on
7 February 20. We were ready. But now what we see is they're
8 doing something we've never seen before. We think it's
9 unprecedented. What they're trying to do is claim that certain
10 incremental changes in very specific offers at times of day,
11 that those intramarket changes affected the price in such a way
12 to be manipulative.

13 THE COURT: That's always been the case.

14 MR. BERKE: Not like this, your Honor. We didn't
15 believe it could be because that data didn't exist, as far as
16 we knew. And that's why for the last two years, we've
17 continually come back to them to ask for more data and also why
18 they gave us this market data.

19 THE COURT: If they are saying that they timed their
20 trades, you're entitled to know when those trades took place.
21 Did you not get that information?

22 MR. BERKE: The timing of the trades, that's fine. We
23 have information about when it was initially entered. They're
24 doing something more. That's not what they're relying on.

25 MR. ESTES: Your Honor, just to be clear, that is

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1 precisely the problem. We did not have the timing the trades
2 were executed. We had the timing Archegos put in the initial
3 order, but all of those executions over the course of the day,
4 we did not have the timing of those --

5 THE COURT: You're arguing that Archegos did not
6 execute in a timely fashion from placing the order?

7 MR. ESTES: No, your Honor.

8 So usually these trades are done using algorithms, and
9 then the algorithm will execute the trade in the way the
10 algorithm is supposed to do it. But it may take place over the
11 course of hours. It could take place over the course of
12 several minutes, but bottom line is we did not know when the
13 timing of those trades happened. And that's why this is such a
14 problem that we are getting this amount of data this late.

15 MR. BERKE: And without doing this similar
16 experiment --

17 THE COURT: Mr. Thomas, did they know when the
18 executions were?

19 MR. THOMAS: Your Honor, there are, I think really for
20 the Court's thinking, should think about three different data
21 sets. There's the data that Archegos itself downloaded from
22 Bloomberg and saved daily. That's the kind of summary data
23 that Ms. Estes was referring to. Then, in the stock market
24 there are precise to the millisecond executions of particular
25 stocks at particular times in particular --

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1 THE COURT: Did they get that?

2 MR. THOMAS: That they got on day one.

3 What we omitted, what we erred to provide was the file
4 that Archegos had at EMSX that showed which of those market
5 trades related to the summary data that they had.

6 THE COURT: I don't understand.

7 MR. THOMAS: Your Honor, when you look at the stock
8 market data, it will show that someone purchased 100 shares of
9 Viacom, but that data won't say who purchased it, and it won't
10 say when the order to purchase it necessarily was first
11 conveyed.

12 THE COURT: Correct.

13 MR. THOMAS: So what the file that the two Bloomberg
14 files we're talking about show is they show that, in fact, when
15 Archegos put in an order to buy Viacom, a bank then went to the
16 market and conveyed that order in the form of an equity order,
17 even though it was a swap. And then an execution took place,
18 and that execution is reflected in the trade data for the stock
19 market.

20 THE COURT: Swaps are the label put on. What they're
21 looking for is the date of the order, the nature of the order,
22 and the dates, times of executions of the order. Do they have
23 that information?

24 MR. THOMAS: They do, your Honor, yes. We fully
25 acknowledge that --

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1 THE COURT: Ms. Estes, you'll get your chance. I
2 promise.

3 MR. THOMAS: We fully acknowledge that a meaningful
4 collection of the data, the part that overlaps those two
5 markets, was this file which we produced.

6 THE COURT: What didn't you give them?

7 MR. THOMAS: We failed to produce the EMSX data
8 obtained directly from Bloomberg.

9 THE COURT: What does that mean?

10 MR. THOMAS: It means Archegos, the system Mr. Hwang
11 used to put in his trade orders, that was through Bloomberg.
12 He would go onto a computer screen and hit "buy Viacom." When
13 Archegos, his fund, would extract data daily from EMSX, it only
14 extracted the summary data. It didn't extract the particular
15 minute-by-minute executions.

16 THE COURT: You have to get that from Bloomberg.

17 MR. THOMAS: So we got that from Bloomberg. But what
18 we didn't do – and again, we acknowledge the error – was turn
19 over that piece of Archegos's recordkeeping.

20 THE COURT: So now they have the times of executions?

21 MR. THOMAS: They do, your Honor.

22 THE COURT: Dates and times.

23 MR. THOMAS: They do. We're confident now they have
24 the same data sets that our experts have.

25 THE COURT: And how do they match the executions to

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1 the orders?

2 MR. THOMAS: So in our very first notice and in
3 subsequent disclosures, we provided examples. The experts take
4 the size, the stock, the time of the order, and they take those
5 variables and they look in the stock market data and find the
6 order with the same time and the same size in the same ticker.

7 THE COURT: Did you get a sampling?

8 MR. THOMAS: We did, your Honor.

9 THE COURT: Was there a methodology to the sampling?

10 MR. THOMAS: There is. I think it is, at a
11 superficial level as simple as I've conveyed it, but I'm sure
12 at a computer level more complicated to do the actual pairing,
13 but we're happy to include in our disclosure a detailed
14 description of that methodology or even, if it's possible --

15 THE COURT: And that methodology will be one that you
16 will stick to, not be able to switch it to something else for
17 the purpose of trial?

18 MR. THOMAS: It is not our intention to switch it.

19 Obviously, if the defense were to say, Hey, make this
20 tweak, it would be unreliable if you didn't, we would want to
21 be able to react to a defense argument. But we think that we
22 have a reliable approach. And we're happy to mark as an
23 exhibit -- I don't know if it's practical to convey, but at
24 some point before trial -- the matched data set that the Court
25 conceives of here. But it may assist the defense. But your

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1 Honor, I think that proposing a roadmap here making concrete
2 dates would probably help all the parties. Based on the
3 Court's schedule, if the Court is going to be gone in --

4 THE COURT: Hold that for a minute.

5 Ms. Estes, you can respond now to Mr. Thomas. He's
6 telling me that he's going to tell you the methodology of the
7 sampling that's going to be used at trial.

8 MR. ESTES: Yes, your Honor.

9 THE COURT: A subset of which would be used at trial,
10 and he's going to tell you the order information and the
11 execution information. Does that give you everything you need?

12 MR. ESTES: So the problem is, your Honor, our experts
13 need to do their own matching analysis because their experts,
14 the matching didn't work perfectly. I think it's 90 percent,
15 90-something percent. So they have not done a perfect match.

16 THE COURT: It would not be unusual for the experts to
17 have different samples, and it will be then a contest of whose
18 sample is right.

19 MR. ESTES: That's true, your Honor. But our experts
20 will need time to do their own matching analysis, if possible.
21 And they've told us that that would involve reviewing
22 approximately 180 million trade executions. That is an
23 extraordinary number.

24 THE COURT: I am sure that there is a way to pierce
25 that information and identify what you need. You've got your

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1 own models, I'm sure.

2 MR. BERKE: Your Honor, can I address the timing?

3 THE COURT: Yes.

4 MR. BERKE: So Judge, just to try to be practical and
5 work with your Honor --

6 THE COURT: I'm not going to give you what you want.

7 MR. BERKE: I understand. Would it be possible to try
8 this case when you return after the April 18 trip? Because we
9 don't believe we would be able to do this trial before then and
10 actually have this material. And if your Honor were to
11 schedule it when you returned, if the prosecution were actually
12 to give us the experiments that I've described and all the
13 data, we would move heaven and earth, your Honor, with our
14 experts with everything we can do with a new expert who we're
15 likely to retain to get the work done to be able to try it
16 after you return.

17 MS. MULLIGAN: Your Honor, and that would be agreeable
18 to Mr. Halligan. I think that's a very fair compromise. Thank
19 you. So we appreciate that, your Honor. Thank you.

20 THE COURT: Okay. We're going to take a short recess.

21 (Recess)

22 THE COURT: Here's what we're going to do. I think
23 neither of you is going to like this. The government's
24 supplementation of its experts' reports will be due by
25 January 24, cutting it down by two days. Defendant's

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1 supplementation of its experts will be due by February 14.
2 Final pretrial conference will be held on February 21, at which
3 time I will decide all motions *in limine*. I don't think
4 there's much to the Daubert motions at this point, and we can
5 go into it later. And trial will begin February 27. That
6 gives us six weeks before Passover.

7 MR. BERKE: Your Honor, if I may, with all respect,
8 the defense would be severely prejudiced. We can't meet that
9 deadline for our experts. We can't be prepared with those
10 dates. And it's not our fault. The prosecution didn't give
11 the defense the critical data it's been relying on and it's had
12 for two years. We just can't do that, your Honor --

13 THE COURT: I don't think they were sitting on it for
14 two years.

15 MR. BERKE: They had it for two years. The disclosure
16 was not produced for 17 months. Our experts literally have
17 been working extraordinarily hard for a year with what they
18 have, and we can't meet that, your Honor. We would be severely
19 prejudiced in our defense. And given how the prosecution is
20 relying on that, the heart of the manipulation case now, it's
21 simply unfair, Judge. And I don't say that lightly, especially
22 to your Honor. I always want to be ready for trial. But I'm
23 telling you, Judge, with what happened here and what we need to
24 do, we can't meet those deadlines and we can't be ready by that
25 date.

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1 THE COURT: Thomas?

2 MR. THOMAS: Your Honor, we're talking about two files
3 that I think, as we've represented in our papers, can be made
4 readily usable by qualified experts which they've already
5 retained. We're prepared to meet the Court's schedule and
6 proceed to trial.

7 MR. BERKE: Your Honor, we need to retain a new expert
8 on intraday trading. We need to get up to speed. We need
9 to --

10 THE COURT: I don't understand why because that's
11 always been the case. The details you didn't have, but the
12 government has been arguing that there were manipulations by
13 trades placed at the end of the day and by the different swaps
14 and the like.

15 MR. BERKE: Your Honor, this is very different. This
16 is completely different. Because we're prepared to address all
17 of those issues, which the prosecution could do with the other
18 data. But if they're allowed to use this data, now they're
19 doing this calculation, these science experiments, and we need
20 somebody with that expertise in order to do those science
21 experiments and testify about why this matching.

22 And again, Judge, it's not just using the millions of
23 trades for each trade. It's also matching it up to what was
24 going on in the market for those stocks. And Judge, I'm not
25 saying this lightly, and I'm not going to stand up, certainly

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1 before your Honor, and say this lightly. I now obviously don't
2 have the same technical understanding as Ms. Estes, but I've
3 been speaking to our experts and they tell us with great fear
4 about what is required. We reached out yesterday to try to
5 find another expert. We're saying that we're doing everything
6 we can to try to see what we can do, but we cannot meet that --

7 THE COURT: Why do you need another expert?

8 MR. BERKE: Your Honor, what the prosecution is doing
9 we don't think is a proper way of analyzing what happened in
10 the market. But if they're doing it, we have to rebut it. We
11 have to have testimony from somebody who can talk about how the
12 matching that they're trying to do with this issue with this
13 new execution data that we're just getting now, how they're
14 trying to match it to suggest some improper price influence
15 from the trades.

16 Obviously, trading may influence price, but they're
17 suggesting it was done in an improper way. We have to rebut
18 how they're trying to match what Archegos did because we did
19 not have the Archegos execution data, and we have to look at
20 what was going on in the market to contradict what they're
21 claiming was done by not just the trades, Judge, because we're
22 not talking about the trades. We're talking about how they
23 were changed and implemented on incremental intraday basis --

24 THE COURT: Did Archegos not have its own data?

25 MR. BERKE: No. And we were told, because the

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1 prosecution said they produced everything that they received
2 from Bloomberg – this was in response to their search warrant –
3 we believed it didn't exist. That's why we kept asking for
4 other trading data. We were here before your Honor --

5 THE COURT: In the ordinary course of business,
6 Archegos gave Bloomberg orders, Bloomberg executed the orders.
7 And you didn't know what the executions were?

8 MR. BERKE: We're talking about what happened after
9 the order and continued on, and that data we never had --

10 THE COURT: In the course of your business, you give
11 Bloomberg a trade to execute a block of stock, and they do it
12 over a course of a period of time and they report back, and
13 they don't give you bit by bit the information that you say you
14 don't have?

15 MR. BERKE: They don't give it to your Honor, they
16 don't. Archegos didn't have it. And in fact, we were relying
17 on the Archegos trade data, not the undisclosed trade data.
18 When the prosecution represented over and over we had all the
19 trade data --

20 THE COURT: How does a business not know what the
21 executions are?

22 MR. BERKE: That level of detail of what happened in
23 the market is not something that is produced and is in
24 Archegos's possession. And we believed it didn't exist.
25 That's why we kept going back to the prosecution. They said

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1 they gave us everything they had.

2 THE COURT: Of course it existed. It's got to exist.

3 MR. BERKE: Your Honor, what we need --

4 THE COURT: It's required to exist.

5 MR. BERKE: So your Honor, given what the prosecution
6 has done with that data, we cannot meet that date. We --

7 THE COURT: I don't think it's so. I don't think
8 you're prejudiced in the way you're saying.

9 MR. BERKE: Your Honor, can we make further
10 submissions from our experts in terms of what's involved?
11 Because I don't think I'm doing an adequate job of explaining
12 it. We have documents and documents that go through the
13 extraordinary steps that they have to do. Because, Judge, what
14 the government is trying to do through these permits is
15 literally take the entire trading in stock and try to
16 cherrypick what Archegos did by the way they traded
17 incrementally.

18 Their indictment alleges domination by how big their
19 overall percentage was. To say that the change in the market
20 order, the change in the limit order, what they did on an
21 incremental basis on information we never had, to match that up
22 to how the market price changed in the overall market, that is
23 extraordinarily complex, Judge, and we cannot meet to deadline
24 and meet this evidence, and we believe it would be severely
25 prejudicial.

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1 And your Honor, I say this with great love because I
2 don't want to screw up the Court's schedule. We wish we had
3 this evidence. We were shocked we didn't have it. That's why
4 we kept asking for it. Your Honor's heard us in here saying we
5 want counterparty trading data so that we can come and try to
6 recreate some of this --

7 THE COURT: If I have to adjourn this, I have to
8 adjourn it into the end of June, and I'm reluctant to do that.
9 And I don't accept what you're saying, Mr. Berke. I don't feel
10 on solid grounds, and I don't think you are on solid grounds
11 either.

12 What does interim data have to do with this case,
13 Mr. Thomas?

14 MR. THOMAS: What does which data?

15 THE COURT: Interim data. I don't know what he's
16 talking about. You can do manipulation on a position. What do
17 you care about slight movements of stocks in the interim?

18 MR. THOMAS: Your Honor, it's a link in the chain.
19 The slight movements, we're not so much focused on the slight
20 movements as that Mr. Hwang can see when he puts in the order
21 that the price goes up, and he puts in a bigger order and the
22 price goes up more, and he puts in an even bigger order and the
23 price goes up more --

24 THE COURT: That I understand.

25 MR. THOMAS: That's the --

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1 THE COURT: What's the difference on minute
2 differences between an order price and an execution price?

3 MR. THOMAS: Well, what I think is being lost perhaps
4 in the shuffle here is that at the end of the day when Archegos
5 wend to Bloomberg and downloaded data, it just downloaded
6 summary data. So it didn't download that at 11:00 a.m.

7 Mr. Hwang said "buy more" and at 12:00 p.m. --

8 THE COURT: That's what they did in the ordinary
9 course of business, Bloomberg's not out to screw its clients.

10 MR. THOMAS: We agree with that, your Honor.

11 I might propose --

12 THE COURT: This is going to be the schedule. I think
13 you can do it.

14 MS. MULLIGAN: Your Honor, with respect to
15 Mr. Halligan, the prejudice is very clear, because we are also
16 a defendant in this case and it's --

17 THE COURT: I know. But it's the same point, isn't
18 it?

19 MS. MULLIGAN: It's extremely difficult for us to
20 analyze this data and cross-examine the government's witnesses.

21 Your Honor, we came into court today and your Honor
22 very wisely suggested an extension of one month or two months,
23 and now we have a one-week extension, which, frankly, puts me
24 on the back of my heels, and it's impossible for me, your
25 Honor. I can barely find a magnifying glass to look at this

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1 data.

2 THE COURT: What do you mean one week?

3 MS. MULLIGAN: Well, your Honor, you're essentially
4 telling us we have to be ready for trial February 27. And when
5 we came in, the Court was entertaining the notion of a
6 one-month extension, if I recall correctly.7 THE COURT: I wasn't entertaining anything. I was
8 throwing out ideas.9 MS. MULLIGAN: In any respect, your Honor, it's highly
10 prejudicial to Mr. Halligan to analyze this data, to understand
11 it, and to be prepared for trial February 27. The government
12 has come in and conceded appropriately to a very serious
13 discovery error of epic magnitude, which they've accepted full
14 responsibility for. It's a voluminous set of data, and here we
15 are trying to prepare for this trial. And with all respect,
16 your Honor, February 27 is highly prejudicial to Mr. Halligan.17 THE COURT: Isn't your case the same in terms of
18 denying the manipulation as Mr. Hwang's case?19 MS. MULLIGAN: Your Honor, we have to analyze the data
20 and review the data, and we are in a very difficult position to
21 do that by February 27.

22 THE COURT: You have different experts?

23 MS. MULLIGAN: Your Honor, we've joined in the
24 application of their experts, and we are even further behind
25 than Kramer Levin is at this point. So it's a very difficult

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1 position for us to be in with respect to Mr. Halligan.

2 MR. BERKE: Can I just add to the arguments, your
3 Honor. The defense did everything we were supposed to do.
4 Over two years we repeatedly asked for this data. We tried to
5 get it through Rule 17(c). We said explicitly that we couldn't
6 understand how they were matching and they can't in our Daubert
7 opposition. The prosecution, until January 5, never told us
8 why don't you just look at this data that we have? You have
9 it, you have the execution data. They never said that.

10 Again, it's their discovery violation. For the
11 defense to be prejudiced because of their discovery violation,
12 they have had this problem before. They told Judge Castel they
13 fixed it; they didn't. It's incredibly significant. We've
14 tried everything. We were ready to go to trial on February 25
15 with the charges, with the data we had, with what we thought
16 this case would be.

17 THE COURT: I don't see any substantial differences in
18 what was and is now. That's the schedule. We'll live by it.

19 MR. BERKE: Your Honor, can I raise this? We can't
20 produce our expert report. If we have to go to trial on
21 February 27, we would try to produce it by the defense case, if
22 we can. We got to get a new expert. We have to be able to
23 cross-examine their expert. We might have Daubert challenges
24 to the science experiments. There are ten new ones. We don't
25 even understand how they did it.

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1 THE COURT: What science experiments? There's no
2 science experiments here.

3 MR. BERKE: Well, it's what they did to match it,
4 Judge. So if we --

5 THE COURT: Are you challenging the formulas used by
6 Hwang and his business, Mr. Thomas?

7 MR. THOMAS: Your Honor, I'm not sure I appreciate
8 the --

9 THE COURT: I don't know what to say.

10 MR. THOMAS: The Court's precise question, the
11 formulas?

12 THE COURT: Algorithms.

13 MR. THOMAS: Here, the algorithms factor in the case,
14 Judge, because the defendant selected particular ways for the
15 bank to fill his order. One of those ways, just to take an
16 example, was to do something called volume-weighted average
17 price, which tells the computer --

18 THE COURT: Ms. Estes, don't do that.

19 MR. THOMAS: Which tells the computer that you must
20 finish the order by the end of the day. Mr. Hwang put that
21 order in with only a few minutes or maybe 40 minutes to spare,
22 causing the --

23 THE COURT: What's the algorithm got to do with it?
24 Did he change his algorithm?

25 MR. THOMAS: He did.

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1 THE COURT: He modified his algorithm? He walked away
2 from what he was doing? He didn't have a different algorithm,
3 he just manipulated it.

4 MR. THOMAS: The algorithms here we're talking about
5 are the bank's algorithms.

6 THE COURT: Which bank?

7 MR. THOMAS: The counterparties here, including Morgan
8 Stanley, UBS, and Credit Suisse.

9 Mr. Hwang would select different algorithms to achieve
10 the manipulation, but a number of that --

11 THE COURT: So they have to understand each bank's
12 algorithm.

13 MR. THOMAS: We've produced in discovery everything
14 we've received from the banks about how their algorithms work,
15 and we're going to call as witnesses representatives from the
16 banks who have already been reflected on a witness list we
17 provided to the defense.

18 THE COURT: I'm sticking with the dates I gave you.

19 MR. BERKE: Your Honor, can I ask again, your Honor
20 has our objections, and I appreciate the challenge with the
21 scheduling. Your Honor, just at minute --

22 THE COURT: Mr. Berke, I know you for a long time. I
23 give you respect. I understand what you're saying. Each of us
24 is driven by different needs. My need is to give you a fair
25 trial, and I believe these dates will give you a fair trial.

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1 MR. BERKE: Can I make two requests, your Honor?

2 THE COURT: Am I wrong? I'll know it on the way.

3 MR. BERKE: Can I make two requests, your Honor?

4 THE COURT: Yes.

5 MR. BERKE: One, after we get the January 24 full
6 disclosure from the prosecution, can we then put in followup
7 questions regarding what we need and also have the meeting with
8 our expert that your Honor suggested at the beginning to
9 actually learn what they did? And then, two, the second --

10 THE COURT: Sit down, Mr. Thomas.

11 What are the two requests?

12 MR. BERKE: So the first is that we get further
13 disclosures after the 24th that we believe we need to
14 understand what they did.

15 THE COURT: Like what?

16 MR. BERKE: Including meeting with their experts, as
17 your Honor suggested is a possibility, so we can ask specific
18 questions about what they did.

19 And then the second request is can we then submit a
20 letter to your Honor about how much time we would need with
21 this schedule to put in our report. It may not be before the
22 start of the trial, because we are going to get a new expert,
23 they're going to do experiments. We will lay out in a letter
24 what we need, your Honor, and would ask your Honor to consider
25 the date.

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1 THE COURT: This is my reaction. I'm not asking for
2 further disclosures. If the government's expert is not given
3 sufficient disclosures to support his opinions, he can bring
4 that out in cross-examination. I think you can get enough
5 information from your experts to do a very effective
6 cross-examination. I'm tempted by the meeting between experts,
7 and I would be prepared to preside over such a meeting to make
8 sure it doesn't go out of bounds.

9 Mr. Thomas, what do you say?

10 MR. THOMAS: Your Honor, I think perhaps it would be
11 prudent to have each side do their disclosures and then for the
12 Court to have a conference to see if such a meeting would be
13 productive.

14 THE COURT: We don't have time for that. You have the
15 schedule. I have set the final pretrial conference a week
16 after the defense disclosures. You don't have time in between
17 to have two steps. We have time for one step.

18 MR. THOMAS: It could be just after the government's
19 disclosures, your Honor, but we don't think that in advance
20 questioning of the government witness is necessary for the
21 defendants to achieve --

22 THE COURT: So for example, can you get your
23 government supplementation before the 24th?

24 MR. THOMAS: Your Honor, I don't believe that we could
25 do that and provide the level of detail that the Court is

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1 expecting.

2 THE COURT: I'm intrigued by your suggestion,
3 Mr. Thomas, that the meeting between experts can occur soon
4 after January 24, but I don't know that Mr. Berke will be
5 ready.

6 MR. THOMAS: Your Honor, I was proposing a meeting
7 between the parties to discuss the government's disclosure to
8 see if meeting with the experts would be productive, but we're
9 happy to accommodate the Court. We expect that our disclosure
10 is going to lay out precisely how it is that the expert
11 obtained the results that they did and what they did with the
12 data to assess it in the first place. So we think that the
13 defendants will have more disclosure than the Court would
14 expect --

15 THE COURT: Well, I can't meet with you next week
16 because I have a trial.

17 MR. THOMAS: So your Honor, perhaps just sticking to a
18 more conventional schedule would make sense in the sense that
19 we'll produce our revised expert reports on the 24th, and the
20 defense will identify to us either informally or to the
21 Court in a letter what further questions they have, and we can
22 take it up from there as to whether there's more information to
23 be supplied.

24 MR. BERKE: Your Honor, we're trying to address
25 obviously the prejudice caused by the government's discovery

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1 violation. What we were envisioning is having an opportunity
2 to actually have our experts question their expert through us
3 or however we do it in an informal way so we can learn exactly
4 the detail of what they did to try to make it actually a more
5 efficient way of being able to understand it. That's why we're
6 suggesting it, Judge. And we're happy to do it here, we're
7 happy to do it elsewhere. And again, it's for our experts to
8 actually --

9 THE COURT: If I let you do it, it's going to be
10 running out of bounds. Someone's going to complain. I don't
11 have the capability that week. And if I sent you to a
12 magistrate judge, there's too much background that he wouldn't
13 or she wouldn't have.

14 MR. BERKE: Your Honor, could we begin with we'll give
15 detailed questions that we'll submit from our experts to them
16 and hope that they'll give us the answers? Because the
17 questions will be very technical questions.

18 THE COURT: Why can't they be in the form of
19 objections rather than --

20 MR. BERKE: Because your Honor, we want to be able to
21 do a test of their analysis to determine what the flaws are
22 with it and how to cross-examine it. And to do that, we need
23 to know what they did. And again, based --

24 THE COURT: So what do you want, Mr. Berke?

25 MR. BERKE: Two things, Judge, the opportunity to ask

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1 them detailed questions following the report to them for their
2 expert to answer.

3 THE COURT: What date?

4 MR. BERKE: We're happy to do it, if they give us the
5 24th, we'll take five days after that. So if I may, your
6 Honor, I will submit it to them by --

7 THE COURT: 31st? 29th?

8 MR. BERKE: We will submit it to them if you give us
9 till the 30th.

10 THE COURT: 30th.

11 MR. BERKE: Thank you, Judge.

12 And then, your Honor, after that, if we were able to
13 submit a letter regarding what would be required for a new
14 expert, we presume, to submit a report, we'll be able to do
15 that after we have that information. And we can do that
16 shortly after that letter to the Court.

17 THE COURT: I think it could be part of your expert's
18 report.

19 MR. BERKE: Judge, what I'm saying is I don't believe
20 we can get an expert report by February 14, but we will do our
21 best to get the best date possible after we get the
22 disclosures. And again, I don't want to overstate it, but if
23 we could have the opportunity to submit a proposal to your
24 Honor once we get that information.

25 THE COURT: You can do that any time.

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1 MR. BERKE: Thank you.

2 THE COURT: I'll let you make proposals to me. I
3 don't need to set a date for that.

4 MR. BERKE: Your Honor, if we could have --

5 THE COURT: You don't have to set a date. Any time
6 you want to propose something or object to something, you can.
7 I don't have any premotion clearances.

8 MR. BERKE: I should know that by now, Judge. So I'll
9 tell your Honor if we could have a week, so by --

10 THE COURT: You can have the questions, you can ask
11 the questions by January 30, and then the government will
12 either address them or not.

13 MR. BERKE: Could we have a deadline for the
14 government to respond, your Honor?

15 THE COURT: What should it be?

16 MR. BERKE: I would suggest, if that Friday would be
17 sufficient time, or that Monday, the 2nd or 5th.

18 THE COURT: February 5.

19 MR. BERKE: Thank you, Judge.

20 And then your Honor, I would propose to your Honor if
21 we could submit our proposal by February 8 for our expert
22 analysis, to the extent we can get it done.

23 THE COURT: What do you mean by your proposals? You
24 have until the 14th.

25 MR. BERKE: Your Honor, I don't believe there's any

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1 chance we'll get a new expert and get our analysis by the 14th.

2 It can't be done. I don't believe we can make meet that
3 deadline. And your Honor, not only did the prosecution have
4 this data for two years --

5 THE COURT: Wait a minute.

6 I'm looking at your qualifications of Mr. Savoldelli,
7 and they look to be highly qualified including for the subjects
8 that you want to discuss.

9 MR. BERKE: Your Honor, Mr. Savoldelli is not someone
10 talking about data crunching. He is really talking about the
11 operations of a home office and hedge funds and the like. He
12 is actually not testifying at all about trading. Our other
13 expert will be talking some measure about overall trading, but
14 he did not deal with intraday price movement because they did
15 not have the data, and that is predominantly the focus. So
16 while our other expert dealt with big changes that your Honor
17 was talking about that we thought this case was about, none of
18 our experts have dealt with intraday trade data and could not
19 because the data was not produced to us.

20 THE COURT: A lot of my thinking is focused on my
21 belief that this so-called interim price movements is not very
22 important. I will reconsider after I see the government's
23 analysis. So you'll have questions to address on the 30th, and
24 there will be opportunity for you to make whatever complaints
25 you want at that time.

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1 MR. ESTES: Your Honor, may I say one thing?

2 THE COURT: Yes. You can say anything you want. Just
3 don't jump up when Mr. Thomas is talking.

4 MR. ESTES: Understood, your Honor. I won't do that
5 again.

6 Just on the point that intraday price movements is not
7 very important, I just want to underscore it appears their
8 entire expert analysis is based on that, and that is what we
9 are not prepared for and will not be prepared for on
10 February 27.

11 THE COURT: So what did I just say to Mr. Berke?

12 MR. ESTES: I understand, your Honor. There is a
13 solution to going to --

14 MR. BERKE: Your Honor, if I understood, maybe --

15 THE COURT: Ms. Estes, what did I just say to
16 Mr. Berke?

17 MR. ESTES: I'm not sure precisely.

18 THE COURT: I said he could complain after he reads
19 the government's disclosure.

20 MR. BERKE: And by "complain," your Honor would then
21 consider whether preclusion is appropriate?

22 THE COURT: You can do whatever you want, Mr. Berke.

23 MR. BERKE: Thank you, Judge.

24 THE COURT: And I'll respond. All right.

25 I think we have finished the day. The motions to

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1 exclude are denied in light of the revised schedule I've given
2 to you. And that revised schedule is as follows:

3 We record it again in a summary order to be filed.
4 The government will supplement its expert's report by
5 January 24. Defendant can submit questions that in its opinion
6 and their opinion, Ms. Mulligan and Mr. Berke and their staffs,
7 that the expert has not answered or documents have not been
8 disclosed, offer whatever they want to do by January 30.

9 Government will respond by February 5. By
10 February 14, defendants will file their supplement to their
11 expert's report. Final pretrial conference will be held
12 February 21 at 10:00. The trial will begin February 27 at
13 10:00 with the picking of a jury.

14 How long a trial do you anticipate, Mr. Thomas?

15 MR. THOMAS: Based on the estimates for the daily
16 schedule the Court provided, we expect the government's case is
17 going to be about five to six weeks, your Honor. We're
18 anticipating about 55 witnesses.

19 THE COURT: You've got to shorten it because I'm
20 leaving on April 18. If you feel that you can't finish your
21 case and the jury can do its evaluation before then, then we
22 have to adjourn the trial.

23 MR. BERKE: Your Honor, we expect our defense case
24 will be approximately two weeks.

25 THE COURT: Well, what we can do after the government

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1 finishes its case, we can adjourn and pick it up again after
2 two weeks.

3 MR. THOMAS: That's acceptable to the government, your
4 honor, if we come to that situation.

5 THE COURT: I think we'll have a shorter trial than
6 you think. Okay. We've got the schedule.

7 MR. BERKE: Your Honor, I'm only saying this because I
8 have an ethical obligation. I believe the February 14 date is
9 probably not a date in which we can put an expert report on
10 this new data that wasn't disclosed to us.

11 THE COURT: Somehow I think I've heard you say that a
12 few times.

13 MR. BERKE: I know, Judge. I just wanted to say it
14 because I would feel bad if I left here, especially before your
15 Honor, and didn't say it. I know. Thank you.

16 THE COURT: You heard what I said.

17 MR. BERKE: I did. I appreciate that, Judge.

18 THE COURT: So you work very hard to do it, and I
19 think you can do it.

20 MS. MULLIGAN: Thank you, your Honor.

21 (Adjourned)